

EDU #2133-93
C # 62-93
SB # 25-93

WAYNE W. THOMAS, ACTING BOARD
SECRETARY, BOARD OF EDUCATION
OF THE TOWNSHIP OF WILLINGBORO,
BURLINGTON COUNTY,

PETITIONER-RESPONDENT,

V.

CHARLENE J. EDWARDS,

RESPONDENT-APPELLANT.

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STATE BOARD OF EDUCATION
DECISION

Decided by the Commissioner of Education, April 8, 1993

For the Petitioner-Respondent, Martinez & Jennings
(Robert P. Martinez, Esq., of Counsel)

For the Respondent-Appellant, Tosca E. Blandford-Bynoe, Esq.

Petitioner, the acting board secretary of the Board of Education of the Township of Willingboro (hereinafter "Board"), sought a declaration from the Commissioner of Education regarding the qualifications of respondent to be placed on the ballot for the annual school election to be held on April 20, 1993. Petitioner's challenge, pursuant to N.J.S.A. 18A:12-2, arose as a result of respondent's ownership of a child care center in a building owned by the Board and leased to respondent under the terms of a written one-year lease for the period July 1, 1992 to June 30, 1993.

On April 5, 1993, the Administrative Law Judge ("ALJ") determined that, as a result of the lease agreement, respondent had an inconsistent interest prohibited by N.J.S.A. 18A:12-2. Finding

such conflict to be substantial and material, the ALJ concluded that it served as a bar to her qualifying as a candidate for election to the Board. Accordingly, the ALJ recommended that respondent's name be stricken from the ballot.

On April 8, 1993, the Commissioner adopted the ALJ's findings and conclusions. The Commissioner agreed

that respondent's position as a lessee in a landlord/tenant relationship with the school district constitutes a conflict under N.J.S.A. 18A:12-2 so as to preclude her from seeking a seat on the Willingboro Board of Education as the factors affecting the contract to which she is a party--notwithstanding that she is but one of several such parties--are so inherently widespread and diffuse as to make it difficult, if not impossible, to adequately remove herself by absention from actual or potential conflict.

Commissioner's decision, slip op. at 12. (Emphasis added.)

Respondent filed the instant appeal on May 7, 1993, arguing that her contractual relationship with the Board was not of such nature as to preclude her from seeking a seat on the Board or serving thereon.

Although the election which formed the basis for the instant petition was held prior to our decision herein, we find that this matter involves an issue of public importance which is likely to recur in the future, warranting a determination in this matter on the merits. See, e.g., In re Geraghty, 68 N.J. 209, 212 (1975).

After a thorough review of the record, we affirm the Commissioner's determination that the lease agreement between respondent and the Board was an inconsistent interest of such nature as to disqualify her from serving as a member of the Board pursuant to N.J.S.A. 18A:12-2. However, we reverse the Commissioner's

determination that, as a result of such conflict, respondent was barred from being a candidate for election to the Board.

N.J.S.A. 18A:12-2, "Inconsistent interests or office prohibited," provides, in pertinent part:

No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board...

That statute, by its express terms, applies only to board members, prohibiting a "member of any board" (emphasis added) from having an interest in a contract with the board. A candidate for a seat on a board is not a board "member" within the express prohibition of the statute. Given the clear and unambiguous language of the statute, it is evident that a victorious school board candidate who cured any conflicts prior to the commencement of his or her term of office would not be disqualified from board membership by operation of that statute. Thus, N.J.S.A. 18A:12-2 cannot be read to disqualify individuals with inconsistent interests from being candidates for board membership.¹

In this case, respondent was party to a lease agreement with the Board at the time she sought election to the Board. Given the nature of the conflict, we fully agree with the Commissioner's determination that N.J.S.A. 18A:12-2 would have disqualified respondent from actually serving as a member of the Board. However, for the reasons expressed hereinabove, that statute did not bar her

¹ We note, in response to petitioner's exceptions citing the nominating petitions of school board candidates in which they certify that they are qualified to be elected, that N.J.S.A. 18A:12-2, "Inconsistent interests or office prohibited," is distinct from N.J.S.A. 18A:12-1, "Qualifications of board members," which includes citizenship, residency, the ability to read and write, and voting registration. Our decision herein is strictly limited to the facts in the record before us as applied under N.J.S.A. 18A:12-2.

from seeking election to the Board and serving thereon if she divested herself of the inconsistent interest prior to the commencement of her term of office.

We therefore affirm the Commissioner's determination that the lease agreement between respondent and the Board was an inconsistent interest of such nature as to preclude her from actually serving as a member of the Board, but reverse the Commissioner's decision that, by virtue of such conflict, respondent also was barred by N.J.S.A. 18A:12-2 from being a candidate for election to the Board.

In that the record indicates that the contractual relationship between respondent and the Board would not have terminated until June 30, 1993, subsequent to the annual school election and commencement of new board members' terms, see N.J.S.A. 18A:10-3, and respondent does not indicate any intent or ability to have cured such conflict prior to taking office, we find no basis for disturbing the outcome of the district's 1993 school election.

Attorney exceptions are noted.

November 3, 1993

Date of mailing

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